

REMARKS/ARGUMENTS

In the June 16, 2006 Office Action, the Examiner rejected claims 22-27 pending in the application. This Response does not amend any claims. Claims 22-27 (2 independent claims; 7 total claims) remain pending in the application. Reconsideration is respectfully requested.

The Examiner first rejected claims 25-27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,863,182. In response to the Examiner's obviousness-type double patenting rejection, Applicant has filed herewith a terminal disclaimer in compliance with 37 C.F.R. §1.321(c) to overcome the rejection.

The Examiner next rejected claims 22, 24-25, and 27 under 35 U.S.C. §102(e) as being anticipated by Nierop, U.S. Patent Application Publication No. US 2004/0020830 (hereinafter "Nierop"). In particular, the Examiner states the Nierop teaches a frame for separating excavated material having a base with a front wall, two side walls and two horizontal side bars extending backward from opposite sides of a bottom of the front wall, at least one vertical bar member extending vertically upward from the top of each of the horizontal side bars at an end of the horizontal side bars opposite the front wall, and a grate rigidly secured to and extending from the top of the vertical bar members to a top of the front wall such that the grate forms less than a ninety degree angle relative to a ground surface. Applicants respectfully traverse this rejection.

The Nierop reference was published on February 5, 2004 and has a filing date of July 31, 2002. Applicants' pending patent application is "a continuation of U.S. Patent Application Serial No. 10/227,993 filed August 26, 2002 and entitled "Method and Apparatus for Separating Excavated Material", now issued as U.S. Patent No. 6,863,182, which is a continuation of U.S. Patent Application Serial No. 09/503,283 filed February 14, 2000, now issued as U.S. Patent No. 6,439,393." Accordingly, in that Applicants' invention was not described in an application for patent, published under §122(b) by another filed in the United States before the invention by the Applicants, Nierop cannot anticipate Applicants' claimed invention. Moreover, with further respect to Nierop, Nierop fails to disclose a grate rigidly secured to and extending from the top of the vertical bar members to a top of the front wall in that the grate in Nierop is pivotally mounted

to an upper cross bar (20a) by hinges (18).

The Examiner then rejected claims 22 and 25 under 35 U.S.C. §102(b) as being anticipated by Bane, U.S. Patent No. 359,659 (hereafter "Bane"). In particular, the Examiner states that Bane teaches a frame for separating excavated material comprising a base having a front wall (wall near right of page), two side walls (walls above B) and two horizontal side bars (B) extending backward from opposite sides of a bottom of the front wall, at least one vertical bar member (A) extending vertically upward from a top of each of the horizontal side bars at an end of the horizontal side bars opposite the front wall, and a grate (O) rigidly secured to and extending from the top of the vertical bar members to the top of the front wall such that the grate forms less than a ninety degree angle relative to a ground surface. Applicants respectfully traverse this rejection.

Bane generally discloses a grinding mill for crushing and reducing ear-corn, grain, feed, and fertilizers. Further, Bane states that "A shaking-screen O is suspended beneath the table D by hangers o of rubber, leather, chains, or other flexible material. Castings P adjustably connected to a pair of diagonally-arranged corner-posts, have pulleys or guides, over which passes a cord or rope, R, having its ends attached to diagonally-opposite corners of the screen, said cord being in connection with and operated from the crank g^2 of the cone-shaft for giving the screen a side-to-side motion." In that the screen in Bane is a shaking-screen with side-to-side motion, Bane fails to disclose a grate that is rigidly secured to, and extending from, a top of the vertical bar members as required by Applicants' claims. Accordingly, in that Bane fails to disclose each and every element of Applicants' claimed invention, Bane cannot anticipate Applicants' claimed invention.

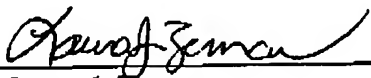
Finally, the Examiner rejected claims 23 and 26 under 35 U.S.C. §103(a) as being unpatentable over Nierop in view of Wall, U.S. Patent No. 1,005,907 (hereafter "Wall"). In particular, the Examiner stated that Nierop teaches all that is claimed by the Applicant except for expressly teaching at least one support bar extending from the top of each of the horizontal side walls to a mid-length of the grate on opposite sides of the grate. The Examiner further states that Wall teaches a support structure for a screen that uses this type of support (Figure 1, to support b4). Therefore, the Examiner states that it would have been obvious at the time the invention

was made to a person having ordinary skill in the art to modify the invention as taught by Nierop to achieve additional support for the grate. Applicants respectfully traverse this rejection.

As previously stated above, Nierop fails to qualify as prior art in that Applicants' claimed invention was invented long before Nierop's published patent application. In addition, Wall also fails to teach each and every element of Applicants' claimed invention, and in particular, a grate rigidly secured to, and extending from, a top of vertical bar members as previously set out in Applicants' claims. Accordingly, Applicants claims 23 and 26 cannot be obvious in light of Nierop and Wall.

In view of the foregoing, Applicant respectfully submits that all of the pending claims fully comply with 35 U.S.C. §112 and are allowable over the prior art of record. Reconsideration of the application and allowance of all pending claims is earnestly solicited. Should the Examiner wish to discuss any of the above in greater detail or deem that further amendments should be made to improve the form of the claims, then the Examiner is invited to telephone the undersigned at the Examiner's convenience.

Respectfully submitted,

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